

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case type: Other civil (Reformation of Instrument)

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CitiBank, N.A., as Trustee for the Holders  
of Structured Asset Mortgage Investments II  
Inc., Bear Stearns ALT-A Trust, Mortgage  
Pass-Through Certificates Series 2006-4,

Court File No. Pending

Plaintiffs,

v.

**SUMMONS**

Russell E. Willits, First Commercial Bank,  
Inc., Discover Bank, FIA Card Services,  
N.A., Ann Strommen, Scott Strommen,  
State of Minnesota Department of Revenue,  
and the United States of America Internal  
Revenue Service,

Defendants.

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THIS SUMMONS IS DIRECTED TO THE ABOVE NAMED DEFENDANTS;

**1. YOU ARE BEING SUED.** The Plaintiffs have started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

**2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

**EXHIBIT**

1

Bradley N. Beisel  
Beisel & Dunlevy, P.A.  
282 U.S. Trust Center  
730 Second Ave. S.  
Minneapolis, MN 55402-2444

**3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

**4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint. The United States of America has 60 days to respond, and the State of Minnesota has 30 days to respond.

**5. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

**6. ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the

Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

**7. THIS LAWSUIT MAY AFFECT OR BRING INTO QUESTION TITLE TO REAL PROPERTY** located in Hennepin County, commonly known as 10141 Drew Ave S, Bloomington MN 55431-2729, which is legally described as follows:

**Lot 7, Block 1, Gallaway 1<sup>st</sup> Addition, Hennepin County, Minnesota.**

(referred to as “the Subject Property”)

The purpose of this action is to obtain an Order for the following relief:

1. Reforming the COR, Document No. 8950290, *nunc pro tunc*, so that it releases mortgage Document No. 8797326 (the Second Mortgage) and not Document No. 8797325 (the First Mortgage).
2. Determining that the First Mortgage, Document No. 8797325, is a valid first mortgage against the Subject Property, notwithstanding the recording of the erroneous COR.
3. Determining that the First Mortgage, Document No. 8797325, has priority over the First Commercial Bank Mortgage, Document No. 8950291, and any liens claimed by defendants Discover Bank, FIA Card Services, N.A., Ann Strommen, Scott Strommen, State of Minnesota Department of Revenue, and the United States of America Internal Revenue Service.
4. Alternatively, ordering that any liens claimed by defendants Discover Bank, FIA Card Services, N.A., Ann Strommen, Scott Strommen, State of Minnesota Department of Revenue, and the United States of America Internal Revenue Service did not attach to the Subject Property because of its exempt homestead status.
5. For further relief as is deemed just and equitable by the Court.

**557.03 NOTICE OF NO PERSONAL CLAIM**

Pursuant to Minn. Stat. § 557.03 you are hereby served with notice that no personal claim is made against you and that any defendant upon whom this notice is served who unreasonably defends this action shall pay full costs to the plaintiff.

**BEISEL & DUNLEVY, P.A.**

Dated: 5-16-12

By: 

Bradley N. Beisel #6191  
282 U.S. Trust Building  
730 Second Avenue South  
Minneapolis, MN 55402-2444  
Telephone: (612) 436-2222  
**Attorneys for Plaintiff**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case type: Other civil (Reformation of Instrument)

CitiBank, N.A., as Trustee for the Holders  
of Structured Asset Mortgage Investments II  
Inc., Bear Stearns ALT-A Trust, Mortgage  
Pass-Through Certificates Series 2006-4,

Court File No. pending

Plaintiff,

**COMPLAINT**

v.

Russell E. Willits, First Commercial Bank,  
Inc., Discover Bank, FIA Card Services, N.A.,  
Ann Strommen, Scott Strommen, State of  
Minnesota Department of Revenue, and the  
United States of America Internal Revenue  
Service,

Defendants.

Plaintiff, for its Complaint against the above named defendants, states and alleges as follows:

1. Plaintiff CitiBank, N.A., as Trustee for the Holders of Structured Asset Mortgage Investments II Inc., Bear Stearns ALT-A Trust, Mortgage Pass-Through Certificates Series 2006-4 ("CitiBank"), is the successor by assignment to the interests of Mortgage Electronic Registration Systems, Inc. as nominee for Countrywide Home Loans, Inc. as set forth herein.
2. Defendant Russell E. Willits is, upon information and belief, an individual resident of the State of Minnesota.
3. Defendant Discover Bank is, upon information and belief, a corporation registered to do business in the State of Minnesota.

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**EXHIBIT**

2.

4. Defendant FIA Card Services, N.A. is, upon information and belief, a national association registered to do business in the State of Minnesota.

5. Defendants Ann Strommen and Scott Strommen are, upon information and belief, husband and wife and individual residents of the State of Wisconsin.

6. Defendant Minnesota Department of Revenue is, upon information and belief, a state agency of the State of Minnesota.

7. Defendant United States of America Internal Revenue Service is, upon information and belief, a federal agency operating under the laws of the United States.

8. This action pertains to real estate located in Hennepin County, commonly known as 10141 Drew Ave S, Bloomington MN 55431-2729, which is legally described as follows:

**Lot 7, Block 1, Gallaway 1<sup>st</sup> Addition, Hennepin County, Minnesota.**

(referred to as "the Subject Property")

9. The Subject Property is presently owned by Defendant Russell E. Willits.

10. Russell E. Willits was formerly married to Tatyana Julia Willits, however, their marriage was dissolved on or about February 24, 2010 and all right, title and interest to the Subject Property was conveyed to Russell E. Willits. No claims are being made in this action against Tatyana Willits.

11. On or about April 21, 2006, Russell E. Willits and his then spouse gave the following mortgages against the subject property:

- a. Mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Countrywide Home Loans, Inc. in the original principal amount

of \$304,000 which mortgage was recorded on May 17, 2006 as Document No. 8797325. (the "First Mortgage"); and

- b. Mortgage to MERS, as nominee for Countrywide Home Loans, Inc. in the original principal amount of \$57,000.00 recorded May 17, 2006 as Document No. 8797326 (the "Second Mortgage").

12. The First Mortgage has been assigned to Plaintiff by an Assignment of Mortgage given by Mortgage Electronic Registration Systems, Inc.

13. On or about February 22, 2007, Russell E. Willits and his spouse at the time gave a mortgage to First Commercial Bank in the maximum principal amount of 275,000.00, which mortgage was recorded on March 14, 2007 as Document No. 8950291 ("The First Commercial Bank Mortgage")

14. In connection with the closing of the First Commercial Bank Mortgage the Second Mortgage was paid in full. No payment was made to the First Mortgage.

15. Also in connection with the closing of the First Commercial Bank Mortgage, a "Certificate of Release of Mortgage by Title Insurance Company or Agent" was recorded. Said Certificate of Release ("the COR") was dated February 27, 2007 and recorded March 14, 2007 as Document No. 8950290. The COR was prepared and executed by First Republic Title, LLC, the authorized agent of Chicago Title Insurance Company.

16. Due to the error and inadvertence of the First Republic Title, LLC, the First Mortgage was purportedly released by the COR instead of the Second Mortgage which was contrary to the parties' intent.

17. It was the intent of all parties that the COR operate to release the Second Mortgage and not the First Mortgage.

18. The Plaintiff is entitled to an order of this Court reforming the Certificate of Release, *nunc pro tunc*, so that the mortgage being released is Document No. 8797326 (The Second Mortgage) and not Document No. 8797325 (the First Mortgage).

19. It was the intent of the parties that the First Commercial Bank Mortgage be subject and subordinate to the First Mortgage.

20. Discover Bank may claim an interest in the Subject Property pursuant to a judgment against Russell E. Willits in the original amount of \$13,752.64 that was docketed on or about September 20, 2010 in Hennepin County District Court File No. 27-CV-10-11-868.

21. FIA Card Services N.A. may claim an interest in the Subject Property pursuant to that certain judgment against Russell E. Willits in the amount of \$8,891.92 docketed July 29, 2010 in Hennepin County District Court File No. 27-CV-10-17-278.

22. FIA Card Services N.A. may also claim an interest in the Subject Property pursuant to that certain judgment against Russell Willits in the amount of \$4,603.27 docketed June 8, 2011 in Hennepin County District Court File No. 27-CV-11-12529.

23. Ann Strommen and Scott Strommen may claim an interest in the Subject Property pursuant to that certain judgment against Russell Willits in the original amount of \$57,823.51 which was docketed on March 26, 2010 in Hennepin County District Court, File No. 27-CV-10672.



24. The State of Minnesota Department of Revenue may claim an interest in the Subject Property pursuant to that certain notice of state tax lien recorded August 13, 2010 as document no. A9547515 claiming a tax lien in the amount of \$11,777.48.

25. The United States of America Internal Revenue Service may claim an interest in the Subject Property pursuant that certain notice of federal tax lien recorded July 21, 2010 as document no. A9538395 claiming a tax lien in the amount of \$39,304.20.

26. The Plaintiff is entitled to an order of this Court that the First Mortgage is entitled to priority over any potential lien on the Subject Property that may be claimed by First Commercial Bank, Inc., Discover Bank, FIA Card Services, N.A., Ann Strommen, Scott Strommen, State of Minnesota Department of Revenue, and the United States of America Internal Revenue Service.

27. Upon information and belief, at all times material hereto, the Subject Property was the homestead of Russell E. Willits and that Russell E. Willits had no equity in the property due to the existence and validity of the First Mortgage and the First Commercial Bank Mortgage and that, accordingly, none of the liens of the defendants as listed above attached to the Subject Property.

WHEREFORE, Plaintiff prays for an order of this Court as follows:

1. Reforming the COR, Document No. 8950290, *nunc pro tunc*, so that it releases mortgage Document No. 8797326 (the Second Mortgage) and not Document No. 8797325 (the First Mortgage).

2. Determining that the First Mortgage, Document No. 8797325, is a valid first mortgage against the Subject Property, notwithstanding the recording of the erroneous COR.


3. Determining that the First Mortgage, Document No. 8797325, has priority over the First Commercial Bank Mortgage, Document No. 8950291, and any liens claimed by defendants Discover Bank, FIA Card Services, N.A., Ann Strommen, Scott Strommen, State of Minnesota Department of Revenue, and the United States of America Internal Revenue Service.

4. Alternatively, ordering that any liens claimed by defendants Discover Bank, FIA Card Services, N.A., Ann Strommen, Scott Strommen, State of Minnesota Department of Revenue, and the United States of America Internal Revenue Service did not attach to the Subject Property because of its exempt homestead status.

5. For further relief as is deemed just and equitable by the Court.

Dated: May 16, 2012

**BEISEL & DUNLEVY, P.A.**

By   
Bradley N. Beisel (#6191)  
282 U.S. Trust Building  
730 Second Avenue South  
Minneapolis, MN 55402  
Ph: (612) 436-2222  
*Attorneys for Plaintiff*

### ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. Section 549.211, Subd. 2 to the party against whom the allegations in this pleading are asserted.

Dated: May 16, 2012

By 

Bradley N. Beisel (#6191)  
282 U.S. Trust Building  
730 Second Avenue South  
Minneapolis, MN 55402  
Ph: (612) 436-2222 /  
*Attorneys for Plaintiff*